

Significant Legislative Rule Analysis

Chapter 246-72 WAC (New)

A Rule Concerning Medical Marijuana Consultant Certificate

December 07, 2015

Describe the proposed rule, including a brief history of the issue, and explain why the proposed rule is needed.

The Washington State Department of Health (department) is proposing a new chapter of rules that would:

- Implement a medical marijuana consultant certification program;
- Establish application, training, and continuing education requirements for obtaining and maintaining a certification
- Set parameters for where and how certificate holders may provide services to customers seeking to purchase marijuana products;
- Describe how and on why a certification may be denied, suspended or revoked; and
- Set fees for obtaining and renewing a certification.

On April 24, 2015 Governor Inslee signed Second Substitute Senate Bill (2SSB) 5052, the Cannabis Patient Protection Act (chapter 70, Laws of 2015). This act creates licensing and regulation of all marijuana producers, processors and retail stores, including medical marijuana, under the oversight of the renamed Washington State Liquor and Cannabis Board (LCB). It also directs the department to complete tasks that include:

- Contracting with a third party to create and administer a medical marijuana authorization database;
- Adopting rules relating to the operation of the database;
- Adopting rules regarding products sold to patients and their designated providers;
- Consulting with the LCB about requirements for a retail store to qualify for a medical marijuana endorsement;
- Establishing and implementing a medical marijuana consultant certification program;
- Developing and approving continuing education for healthcare practitioners who authorize the medical use of marijuana; and
- Making recommendations to the legislature about establishing medical marijuana specialty clinics.

RCW 69.51A.290 establishes a medical marijuana consultant certificate and authorized the department to adopt rules setting application, training, training program, continuing education, fees and other standards for certificate applicants and holders. The legislature also authorized the department to adopt rules to set standards for people who work in medically endorsed marijuana

retail stores and who provide assistance to patients with selecting products to best meet their needs.

The proposed rules are one of three rules components of the department's overall implementation of E2SSB 5052. In separate rule makings, the department will propose rules on administration of the medical marijuana authorization data base, and rules regarding products sold to patients or their designated providers.

Is a Significant Analysis required for this rule?

Yes, as defined in Chapter 34.05 RCW, the department has determined that portions of the proposed rule require a significant analysis. The department, however, has determined that no significant analysis is required for the following portions of the rule.

Table: Non-Significant Rule Identification

#	WAC Section	Section Title	Reason
1	WAC-246-72-010	Definitions	Does not meet the definition of a legislatively significant rule under RCW 34.05.328(5)(c).
2	WAC 246-72-040	Display of Certificate	The proposed rule is exempt under RCW 34.05.328(5)(b)(iii). The rule incorporates language from statute without material change.
3	WAC-246-72-070	Denial, suspension, and revocation of certificate-Procedure	The proposed rule is exempt under RCW 34.05.328(5)(b)(iii). The rule incorporates language from 2SSB 5052 and chapter 34.05 RCW Part IV regarding appeals procedures without material change.
5	WAC-246-72-990	Fees	The proposed rule is exempt under RCW 34.05.328(5)(b)(vi). The proposed rule sets fees pursuant to legislative standards.

Clearly state in detail the general goals and specific objectives of the statute that the rule implements.

The intent of 2SSB 5052 is to establish the Cannabis Patient Protection Act, creating a viable regulated medical marijuana system which provides for the oversight of production and sales, and protection of patients. The legislation better assures safe, consistent, and adequate access to marijuana for qualifying patients. RCW 69.51A.290 directs the department to implement a medical marijuana consultant certificate, and authorizes the department to adopt rules setting training standards, prescribing what guidance consultants may provide to qualifying patients seeking to purchase marijuana products, and other administrative functions.

The proposed rules support the statute's intent by establishing:

- Minimum requirements for obtaining and renewing a medical marijuana consultant certificate.
- The practice parameters for a medical marijuana consultant certificate holder.
- Minimum training and continuing education requirements for medical marijuana consultant certificate holders.
- Standards for approval of training programs for a medical marijuana consultant certificate holder.
- Prohibition on an individual working as a MMJ consultant with an expired certificate.
- Requiring cooperation with department investigations,
- Setting standards for the department denial, suspension, or revocation of a medical marijuana consultant certificate,
- Fees to obtain or renew a medical marijuana consultant certificate.

Explain how the department determined that the rule is needed to achieve these general goals and specific objectives. Analyze alternatives to rulemaking and the consequences of not adopting the rule.

E2SSB 5052 directed the Department of Health to adopt rules establishing a medical marijuana consultant certificate. No alternatives to rulemaking are available. Where the bill does not provide specific requirements, rules are needed to set consistent and enforceable requirements within the statutory authority granted to the department.

Explain how the department determined that the probable benefits of the rule are greater than the probable costs, taking into account both the qualitative and quantitative benefits and costs and the specific directives of the statute being implemented.

During the rulemaking process the department collected input from stakeholders interested in the proposed rule. Six potential training providers expressed an interest. The department surveyed the six potential training providers regarding the content and impacts of the proposed rules. Details on responses are included in the section analysis below.

This rule proposal creates fourteen new sections of rule. Eleven sections are either entirely or partially significant legislative rules:

1. WAC 246-72-020 Certificate requirements.

Description of the proposed rule: The proposed rule establishes the requirements for an applicant for a medical marijuana consultant certificate. Applicants must submit the following items:

- Completed application form.
- Fees identified in WAC 246-72-990.
- Proof of successfully completing an approved training program.
- Proof of being at least 21 years old.
- Proof of a current cardiopulmonary resuscitation (CPR) certification.

Cost/Benefit Analysis: The department assumes that the application process will take between 4.25 to 6.25 hours for applicants to complete. The statute requires applicants to complete a medical marijuana consultant training program to obtain a certificate. The estimated cost for applicants to complete an approved training program range from \$400 to \$1,000. The stakeholders discussed the benefits of requiring stores to have staff trained in CPR. The benefit of the CPR training is that staff will be able to respond in case of a coronary or respiratory emergency. A CPR course can cost between \$0 to \$50, depending on the course provider and content. The benefit of the rule is that it informs applicants what they must provide or obtain to receive a medical marijuana consultant certificate.

2. WAC 246-72-030 Practice parameters.

Description of the proposed rule: The proposed rule establishes the practice parameters (services) a certificate holder may provide. The following portions of the proposed rule are prescribed in statute, allowing medical marijuana consultants that own, are employed by, or volunteer at a retail store to:

- Assist customers with selecting medical marijuana products including cannabinoid profiles.
- Describe risks and benefits of medical marijuana products and methods of consuming the products.
- Advise customers about safe handling and storage of product including ways to reduce access by minors.

The proposed rule also prohibits customers from consuming product on the premises. It also restricts medical marijuana consultants from: offering diagnosis of disease, proposing changes to patient's other course of treatment, and soliciting remuneration directly or indirectly for recommending a certain product, producer, processor, clinic, or healthcare practitioner.

Cost/Benefit Analysis: The proposed rules identify the practice parameters of medical marijuana consultants. They do not impose compliance costs on medical marijuana consultants or their employers. These parameters comprise how a consultant can practice but they are not compliance costs per se and are intended to describe what actions a consultant may or may not take when interacting with patients. The benefit of the rule is that it clearly establishes practice standards for consultants consistent with the law, protects the health and safety of patients seeking products to meet their needs, and provides information on how to reduce access to minors.

3. WAC 246-72-050 Cooperation with investigation.

Description of the proposed rule: The proposed rule establishes requirements that certificate applicants or consultants must follow if they are being investigated, which includes a requirement to submit any requested records or documents within twenty-one business days.

Cost/Benefit Analysis: Costs associated with cooperating with an investigation do not represent compliance costs that apply to all consultants; they apply only to applicants or certificate holders who are the subject of a department investigation regarding their application or practice. The benefit of the rule is that it allows the department to notify an applicant or certificate holder upon receipt of a complaint, thereby protecting patients from individuals who do not meet minimum requirements to obtain a certificate, or from certificate holders who may be in violation of applicable laws or rules.

4. WAC 246-72-060 Denial, suspension, and revocation of certificate.

Description of the proposed rule: The proposed rule establishes the criteria for which the secretary may deny, suspend, or revoke a certificate.

Cost/Benefit Analysis: The proposed rule identifies the criteria for the department to take action against medical marijuana certificate holders that have violated any part of chapters 69.50 and 69.51A RCW, and chapter 314-55 WAC, or this chapter. The benefit of the rule is that it allows the department to protect patients by ensuring they are provided quality services only by medical marijuana consultants with valid certificates.

5. WAC 246-72-080 Renewals and updating license information.

Description of the proposed rule: The proposed rule establishes the steps and requirements for renewing and updating medical marijuana consultant certificate information.

Cost/Benefit Analysis: The proposed rule states the requirements for renewing and updating consultant certificates. The benefit of the rule is that it ensures the certificate holder information is current and valid, allowing medical marijuana consultants to provide quality services to qualifying patients and designated providers.

6. WAC 246-72-090 Expired certificate.

Description of the proposed rule: The proposed rule prohibits a medical marijuana consultant certificate holder from practicing with an expired certificate. The rule also sets requirements for renewing a certificate that has been expired for more than three months and less than three years including completion of a late renewal application form and payment of the current application fee and a late renewal fee. The rule also sets requirements for reissuing a certificate that has been expired for three years or more, including taking and successfully completing the required consultant training again, completing a new application form and payment of the current application fee, and proof of a current CPR certification.

Cost/Benefit Analysis: The time and cost to keep a certificate current are ultimately the responsibility of the consultant and not considered regulatory compliance costs. The rule applies only to a consultant who has allowed his or her certification to expire. The benefit of

the rule is that it provides consultants with the process they must follow to renew an expired certificate so they may provide services legally and for those whose certificates have expired for three years or more, to update the training by again successfully completing the training course, and proof of a current cardiopulmonary resuscitation (CPR) certification.

7. WAC 246-72-100 Continuing education.

Description of the proposed rule: This section describes the requirements for continuing education in order to renew the medical marijuana consultant certificate each year. The statute directs the Secretary to create a continuing education requirement for consultants. The department consulted stakeholders regarding what should be the minimum number of training hours that could result in consultants received meaningful continuing education. The department recommends requiring 10 hours of continuing education every year, and that consultants can take their CE hours in either in-person or through distance learning.

Cost/Benefit Analysis: Department staff researched the costs continuing education hours for similar programs. Continuing education hours required in the proposed rule typically cost between \$50 and \$100 per hour, although some training may be available at lower or no cost (e.g., webinars, conferences, on-line sources). The benefit of the rule is that medical marijuana certificate holders know the required hours of CE to maintain the knowledge and skills necessary to continue to provide quality services that protect patients.

8. WAC 246-72-110 Training program requirements.

Description of the proposed rule: The proposed rule establishes the criteria for a medical marijuana consultant certificate training program as approved by the department. Training programs must include: A minimum of twenty instruction hours in the subjects below. The first six subjects are specifically required in statute, although statute allows the department to require additional subjects.

- Six (6) hours about Washington law.
- Two (2) hours about qualified conditions and the common symptoms of each.
- Two (2) hours about the short and long term positive and negative effects of cannabinoids.
- Two (2) hours about products that may benefit qualifying patients based on the patient's condition and any potential contraindications.
- One (1) hour about the risk and benefits of various routes of administration
- Two (2) hours about safe handling of marijuana products, including strategies to reduce access by minors.
- Two (2) hours about customer privacy and rights.
- Two (2) hours about the risks and warning signs of overuse, abuse, and addiction
- One (1) hour about ethics.

The proposed rule requires an examination comprised of at least five questions for each hour of instruction for each subject. The applicant must pass each examination with a minimum score of 70 percent. Questions must be randomly selected from a sufficient supply of questions to ensure the validity of the examination. The secretary reserves the right to approve or deny individual questions and answers. Training may be provided in-person or electronically.

The proposed rule also establishes the requirements instructors must have in addition to demonstrated knowledge and experience related to marijuana and:

- An active license to practice as a healthcare professional as defined in RCW 69.51A.010(2),
- An active license to practice law in the state of Washington, or
- A bachelor's degree or higher from an accredited college or university in agriculture, botany, or horticulture.

Cost/Benefit Analysis: The proposed rule is consistent with training program requirements in other states with similar requirements, primarily Colorado. Statute specifies most of the subjects that a training program must include in its curriculum under the proposed rules. The potential training providers were surveyed regarding other course topics and the prescribed length of time the training components should incorporate to better assure the essential skill and knowledge areas for students to work under a medical marijuana consultant certificate. The training providers indicated that the cost to develop a training program ranged from \$25,000 to \$210,000, in part depending on whether the training provider is adapting an existing program to comply with the rule, or establishing a new training program. The benefit of the rule is that it clearly establishes what topics and length of instruction are required for completion of a department approved medical marijuana consultant certificate training program, and better assures that prospective applicants successfully complete an approved training program prior to applying for a certificate. The rule also better assures that prospective applicants receive instruction from trainers who meet qualification and experience standards.

9. WAC 246-72-120 Approval of training program.

Description of the proposed rule: The proposed rule establishes the process for the secretary to approve any training program which meets the requirements of this chapter. The requirements include that:

- The authorized representative of the training program shall request approval on a form provided by the department.
- The application must include, but is not limited to, documentation required by the secretary pertaining to the program's:
 - Syllabus
 - Identification and qualifications of instructors
 - Training locations and facilities
 - Outline of curriculum plan specifying all subjects and length in hours such subjects are taught

- Class objectives
- Ability to provide training in-person or electronically.

Cost/Benefit Analysis: The proposed rules establish the department's process for training program providers to follow when submitting their programs for approval. Respondents indicated that it would take between 4 and 16 hours to obtain and submit all required elements, at a resulting cost range of \$165 to \$1,000. The benefit of the rule is that it clearly prescribes how applicants can apply for training program approval, which is expected to result in qualified training providers.

10. WAC 246-72-130 Renewal of training program.

Description of the proposed rule: The proposed rule states the requirements for medical marijuana consultant certificate training programs to renew their approval with the department. Training programs are required to participate in the renewal process established by the department every two years, and comply with any changes to this chapter or training standards and guidelines to maintain an approved status.

Cost/Benefit Analysis:

The proposed rule establishes the requirements for renewal of approved training programs. The benefit of the rule is that it provides standards and guidelines for any approved training program to maintain approved status and provide consistent training for medical marijuana consultant certificate holders.

11. WAC 246-72-140 Closure of an approved training program.

Description of the proposed rule: The proposed rule states the process a department approved medical marijuana consultant certificate training program must follow when closing. The training program provider shall notify the department in writing, stating the reason and the date of intended closure.

Cost/Benefit Analysis:

The proposed rule establishes the process for closure of a department approved medical marijuana consultant certificate training program. The benefit of the rule is that it provides a process for training programs to notify the department when closing, allowing the department to continue to provide adequate medical marijuana consultant certificate training.

Cost Benefit Summary

The proposed rules package creates an efficient and effective regulatory program for certification of medical marijuana consultants consistent with the goals and objectives of Cannabis Patient Protection Act (chapter 70, Laws of 2015). As described above, there will be costs for individuals to obtain a medical marijuana consultant certificate. There will also be costs for the training providers that elect to create and offer courses. The statute requires that prospective

certificate applicants meet minimum requirements and receive standardized training, and that consultant training programs meet minimum curriculum standards. The statute also anticipates that the department should have the ability to pursue possible denial, revocation or suspension of a certificate through investigation, and that consultants should not practice with an expired certification. The proposed comprehensive program clearly benefits clients by identifying the allowed and disallowed practices of consultants, creating a viable regulated medical marijuana system which provides for the oversight of the consultant certification program and protection of patients who are seeking products to meet their needs. Therefore the total probable benefits of the rule exceed the total probable costs.

Identify alternative versions of the rule that were considered, and explain how the department determined that the rule being adopted is the least burdensome alternative for those required to comply with it that will achieve the general goals and specific objectives state previously.

During the collaborative rulemaking process the department discussed each of the regulatory components with the stakeholders and advisory groups. The length and course contents were discussed at length. The group concluded that the scope and length of the required training program resulted in the least burdensome alternative to achieve the general goals and specific objectives of the program.

Determine that the rule does not require those to whom it applies to take an action that violates state or federal law.

The proposed rule does not require those to whom it applies to take an action that violates requirements of another state law.

The proposed rule also does not require any person to violate federal law. However, those persons who voluntarily choose become certified as a medical marijuana consultant are technically violating federal law by possessing and selling marijuana, a schedule 1 controlled substance. On August 29, 2013, Deputy U.S. Attorney James M. Cole issued a memorandum entitled “Guidance Regarding Marijuana Enforcement.” In the memo, Deputy Attorney General Cole listed eight priorities related to marijuana. He stated the federal government’s expectation that states that “have enacted laws authorizing marijuana-related conduct will implement strong and effective regulatory and enforcement systems that will address the threat those state laws could pose to public safety, public health, and other law enforcement interests.” Jurisdictions that “implement strong and effective regulatory and enforcement systems” are less likely to threaten the federal priorities. States whose regulation is not as robust may be challenged by the federal government and individuals may be prosecuted.

The proposed rule puts limits and requirements on certificate holders Cannabis Patient Protection Act (chapter 70, Laws of 2015). This contributes to a strong and effective regulatory system in Washington and complies with the Deputy U.S Attorney’s memo.

Determine that the rule does not impose more stringent performance requirements on private entities than on public entities unless required to do so by federal or state law.

The proposed rule does not impose more stringent performance requirements on private entities than on public entities. It only applies to individuals primarily as the certificate holders. Both private and public entities who want to be an approved training program are given the same requirements.

Determine if the rule differs from any federal regulation or statute applicable to the same activity or subject matter and, if so, determine that the difference is justified by an explicit state statute or by substantial evidence that the difference is necessary.

The rule differs from federal law because federal law prohibits the possession and sale of marijuana. However, the rule conforms to the Deputy U.S Attorney's 2013 memo because it contributes to a strong and effective regulatory system and is consistent with the federal government's eight priorities.

While marijuana remains an illegal substance under federal laws under the current administration guidance regarding marijuana enforcement was provided that allows states to pursue legalization. The guidance does require states that do legalize marijuana to: "implement strong and effective regulatory and enforcement systems that will address the threat those state laws could pose to public safety, public health, and other law enforcement interests. The department works carefully with other state agencies to best assure our work in implementing Cannabis Patient Protection Act (chapter 70, Laws of 2015) is consistent with this guidance.

Demonstrate that the rule has been coordinated, to the maximum extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter.

The proposed rule is coordinated to the maximum extent practicable with other applicable laws, including current medical cannabis law under chapter 69.51A RCW.

The rule has been coordinated with other state rules to ensure a consistent and comprehensive regulatory system in Washington. While it inherently conflicts with federal law, it conforms to the Deputy U.S Attorney's 2013 memo.